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September 7, 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas, Esquire
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

Re: MM Docket No. 00-245
RM-9971
Alberta, Virginia, and Whitakers, North Carolina

Dear Ms. Salas:

Transmitted herewith, on behalf of Garysburg Radio, are an original and four copies of its "Reply to Opposition to Request for Leave to File Supplement" in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate with this office.

Very truly yours,



Anne Goodwin Crump
Counsel for Garysburg Radio

Enclosures

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 00-245
Table of Allotments,)	RM-9971
FM Broadcast Stations.)	RM-10185
(Alberta and Dinwiddie, Virginia;)	RM-10186
Whitakers and Garysburg, North Carolina))	

Directed to: Chief, Allocations Branch

REPLY TO OPPOSITION TO REQUEST FOR LEAVE TO FILE SUPPLEMENT

Garysburg Radio, by its attorneys, hereby respectfully submits its Reply to the "Opposition to Leave to File Supplement" filed by MainQuad Broadcasting, Inc. ("MainQuad") in the above-referenced proceeding on August 28, 2001. With respect thereto, the following is stated:

1. On August 14, 2001, Garysburg Radio submitted its Request for Leave to File Supplement and Supplement to Reply Comments" in response to information newly submitted in the Reply Comments of Dinwiddie Radio Company ("DRC") and MainQuad submitted on August 3, 2001, in this proceeding.

2. MainQuad now argues that the information presented in the Reply Comments was not new. With regard to the statements made in its own Reply Comments, however, it is difficult to understand how a description of activities which took place between July 23, 2001, and August 1, 2001, could be anything but "new." In its Supplement, Garysburg Radio explicitly acknowledged the previous claims made by MainQuad with regard to interference. Obviously,

however, reported activities which did not take place and documents which were not created until between July 23, 2001, and August 1, 2001, could not have been addressed in Garysburg Radio's Comments and Counterproposal and Reply Comments filed in January and February of 2001. The information contained in MainQuad's Reply Comments therefore must be considered to be new. On the other hand, what was not new was MainQuad's failure to indicate whether it had gone beyond locating the source of the alleged interference problems to attempt any remedial action whatsoever, the numbers of persons affected by the alleged interference, or whether the Mayor of Alberta's comments represent anything more than her personal opinion. Likewise, with regard to the information in DRC's Reply Comments concerning the complete lack of overlap between the current WSMY-FM signal contour and its proposed signal contour, while the "fact" as such may have previously existed, it had not previously been presented in this proceeding.

3. Turning to the merits of Garysburg Radio's Supplement, MainQuad argues that the proposition advanced by DRC and seconded by Garysburg Radio, namely, that the proposed allotment at Whitakers should be treated as a new allotment rather than a reallocation, constitutes an untimely counterproposal. Such is not the case, however. While the proposal to treat the Whitakers allotment as a new allotment would provide an alternate solution to MainQuad's alleged difficulties with its existing channel, it also represents a more realistic understanding of the true nature of MainQuad's own proposal.

4. MainQuad also argues that Garysburg Radio has in some way conceded the proposed allotment to Whitakers. Once again, however, this claim is inaccurate. In its Supplement, Garysburg Radio specifically noted that adoption of its Counterproposal would completely solve

the difficulties which MainQuad has described without depriving the community of Alberta of its sole local broadcast service. Furthermore, and as indicated by MainQuad's response to this point, Garysburg Radio continued to maintain the superior public interest benefits which would be realized through allotment of Channel 276 to Garysburg rather than Whitakers. It virtually goes without saying, and Garysburg Radio has acknowledged, that the allotment of a channel to provide first local service to almost any *bona fide* community would provide some public service benefits. Nevertheless, Garysburg Radio continues to urge the Commission to make the allotment to Garysburg, as this allotment would provide the greater public service benefits. Not only would Garysburg, a community larger than Whitakers, obtain a first local transmission service, but the community of Alberta would retain an operational station.

5. MainQuad argues that the population difference between Garysburg and Whitakers of 197 persons is insignificant. This argument flies in the face of Commission precedent, however. The Commission has indeed found similarly small, and even smaller population differences to be dispositive. Indeed, "it is well-settled that when comparing two competing counterproposals that would provide a first local service, and finding neither community distinguishable based on reception services, the decisional factor is the population difference." *Athens and Atlanta, Illinois*, 11 FCC Rcd 3445, 3446 (Allocations Branch 1996). In that case, the population difference between the two communities was only 212. Moreover, in *Athens and Atlanta, Illinois*, the Allocations Branch was following a principle set forth by the Commission in *Blanchard, Louisiana, and Stephens, Arkansas*, 10 FCC Rcd 9828 (1995). There, the Commission stated that, in comparing two proposals which both involve first local service, "the Commission has uniformly made the decision based on population difference and reception services. And, where

it has found that neither community falls below a threshold level of reception services, the Commission has based its decision on a straight population comparison.” *Id.* at 9829. In that case, the Commission upheld the award of a channel to a community based upon a population difference of only 38 persons. The principles enunciated by the Commission clearly are applicable to the instant proceeding. Both Whitakers and Garysburg currently receive radio services above the threshold for being considered well-served. Accordingly, the dispositive factor is the population difference, and that factor favors Garysburg.

6. Furthermore, when considering MainQuad’s grand claims of the provision of new service, it must be remembered that all of the persons within the service area of the existing station at Alberta would lose service for an indeterminable period of time. Given the lengthy process involved of having the channel included in an auction, conducting the auction, and then providing three years in which the eventual permittee (not necessarily MainQuad) may build, it is clear that the period without service would extend to a number of years. During all of that time, the community of Alberta would be deprived of its sole local transmission service. While MainQuad argues that the residents of Alberta cannot have come to rely upon the station due to the on-and-off nature of its broadcasts, that situation results from a choice made by MainQuad itself. MainQuad indicated in its Reply Comments that engineers had determined that WSMY-FM’s on-air operations were entirely in compliance with the station’s license. Thus, the decision to cease operations was a voluntary choice made by MainQuad, perhaps based upon business and public relations concerns, and was not an obligation.¹ In any event, the claimed lack of reliance

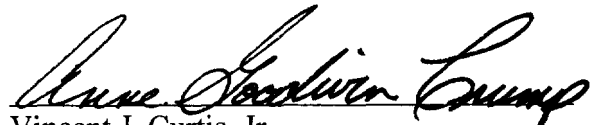
¹ It is always possible that the pendency of this rule making proceeding may have been another factor in the decision.

on the station results entirely from a decision made by MainQuad, the very party that now seeks to leave Alberta.

7. Thus, it is clear that the public interest would be best served by adoption of Garysburg Radio's Counterproposal in this proceeding. As a result, the community of Alberta would retain its only local transmission service, any interference issues with regard to that service would be eliminated, and the community of Garysburg would receive its first local transmission services. Accordingly, Channel 299A should be substituted for Channel 276A at Alberta, the license for WSMY-FM should be modified accordingly, and Channel 276A should be allotted to Garysburg, North Carolina.

Respectfully submitted,

GARYSBURG RADIO

By: 
Vincent J. Curtis, Jr.
Anne Goodwin Crump

Its Attorneys

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September 7, 2001

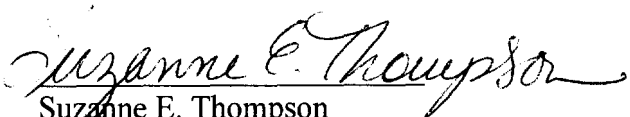
CERTIFICATE OF SERVICE

I, Suzanne E. Thompson, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C. do hereby certify that true copies of the foregoing "Reply to Opposition to Request For Leave to File Supplement" were sent this 7th day of September, 2001, by United States mail, postage prepaid, to the following:

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